



TOWN OF DALMENY COUNCIL POLICY

POLICY TITLE	ADOPTED BY:	EFFECTIVE DATE	POLICY NO.	ORIGIN/AUTHORITY
Compliance and Enforcement Policy	Wilson/Slack	August 25/14	3/14	Planning & Development Act 2007

A. PURPOSE

1. The purpose of this Policy is to ensure that compliance proceedings and the enforcement of land use regulatory matters is undertaken consistently, and in accordance with the best interests of the Town, and of its residents. This Policy is intended to ensure that the Town exercises its discretion appropriately when determining whether proceedings are appropriate, and in determining what compliance steps may be taken, in a manner consistent with the public interest and the Town's policy objectives.

B. POLICY OBJECTIVE

2. The objective of this Policy is to establish principles and procedures to assist in the determination of appropriate compliance and enforcement proceedings in order to achieve compliance with the Official Community Plan ("the "OCP"), the Zoning Bylaw (the "Bylaw"), and Development Permits ("Permits") issued by the Town, and in relation thereto, compliance within the Town boundaries with the requirements of *The Planning and Development Act, 2007* (the "Act").

C. PRINCIPLES

3. The Town is committed to:
 - (a) Acting in the best interests of public health and safety, as well as in the best interests of community amenities;
 - (b) Ensuring that actions are consistent, fair and impartial;
 - (c) Ensuring that action taken to enforce compliance in line with the relative severity of any offence or alleged offence;

- (d) Ensuring that any actual potential conflict of interest situations are resolved in a fair, consistent and impartial manner;
- (e) Making cost-effective decisions concerning compliance and enforcement action, having regard to likely outcomes;
- (f) Ensuring that action is instigated within any relevant specified time limits.

D. RESPONSIBILITY

- 4. This Policy is the responsibility of the Administrator, or such person or persons as the Administrator may delegate responsibility from time to time.

E. COMPLAINT AND INVESTIGATION

- 5. Where a written complaint (a “Complaint”) has been made which alleges a violation of the OCP, the Bylaw, a Permit, or the Act, the Complaint shall be directed to the Administrator for further action.
- 6. Where Police or Town Staff should become aware of a potential violation, other than by way of written complaint, the matter shall be referred to the Administrator for further action(which thereafter shall be a “Complaint” for the purposes of this Policy.
- 7. Upon receiving notice of a Complaint, which discloses a possibility that a violation has occurred, the Administrator shall refer the matter to the Town of Dalmeny Police (the “Police”) for investigation.
- 8. Upon receiving notice of a Complaint from the Administrator, the Police shall investigate the Complaint, having due regard to the urgency and the magnitude of the alleged violation, other matters to which the Police are required to attend, and the resources available to the Police.
- 9. When its investigation is complete, the Police shall submit a report to the Administrator.

F. INITIAL REVIEW AND RESPONSE

- 10. Where the Administrator has received a report from Police, and reasonable and probable cause to believe that a violation has taken place does not exist, in the opinion of the Administrator, the matter shall be reported to Council, and the Administrator shall advise the complainant, if any, of the results of the investigation. The Complaint, if any, and the investigation report shall be retained on file for a period of seven years.
- 11. If at any point any additional complaint is made with respect to the subject matter of the original Complaint, and in the event that it appears that further investigation may be warranted, the Administrator may request the Police to undertake such further investigation, with the results thereof being dealt with according to the same procedure which governed the original Complaint.

12. Where a determination has been made that no reasonable and probable cause exists to conclude that a violation has taken place, Council may, upon review, direct the Administrator nevertheless to refer the matter to legal counsel for confirmation thereof.
13. Where the Administrator should determine that there is reasonable and probable cause to conclude that a violation has occurred, or where Counsel has referred the matter to legal counsel and legal counsel is of the opinion that there is reasonable and probable cause to believe that a violation has occurred, the Administrator shall forthwith send a letter to person or persons who are the subject of the complaint (the "Subject"), advising of the nature of the complaint and of the investigation, asking that the Subject take all necessary steps to ensure compliance at the earliest opportunity, and seeking comment from the Subject on the nature of the complaint. The matter shall be reported to Council together with the response, if any received from the Subject.
14. Where:
 - (a) The Subject provides sufficient information to the Administrator to permit the Administrator to conclude that no violation has occurred;
 - (b) The Subject responds to a letter from the Administrator by placing itself in compliance;
 - (c) There is no apparent intention on the part of the Subject to cease being in compliance in the future;
 - (d) There has been no similar Complaint involving the Subject or the property giving rise to the Complaint within the previous five years; and
 - (e) There has been no personal injury or tangible damage to property resulting from the alleged violation

no further compliance or enforcement proceedings shall be taken.

G. REFERRAL AND ENFORCEMENT RECOMMENDATIONS

15. Where the Administrator is of the opinion that there is reasonable and probable cause to believe that a violation has taken place, and the requirements of paragraph 14 of this Policy have not been met, the Administrator shall provide a copy of the Complaint and all related documentation to legal counsel for the Town.
16. Where legal counsel for the Town is of the opinion that reasonable and probable cause exists, counsel will report to the Administrator and will recommend appropriate enforcement proceedings.
17. Thereafter, the Prosecutor will evaluate, taking into account the public interest, the Town's policies and priorities, and other factors set forth below, whether or not enforcement action should be initiated, and if so, counsel's recommendations as to enforcement proceedings. Any recommendation from legal counsel shall be made in light of the following principles:

- (a) Seriousness of the breach, including the harm or potential harm to the environment, public health, safety or amenities caused by the breach;
 - (b) Whether personal injury or tangible property damage has occurred;
 - (c) The degree to which community amenities have been adversely affected;
 - (d) The availability of any alternatives to legal proceedings (including any other means by which the breach could be remedied);
 - (e) Whether the offender has been dealt with previously by means falling short of Court proceedings;
 - (f) Where the alleged breach is a second or continuing offence;
 - (g) Whether a Court Order is considered necessary to prevent a recurrence of any violation;
 - (h) The number of complaints about the unlawful activity;
 - (i) Whether have been received from emergency service personnel or other public authorities;
 - (j) Physical, mental health or any special infirmity of the alleged violator, and any other mitigating circumstances;
 - (k) The resources required to be expended by the Town in achieving compliance, including the potential length and expense of Court proceedings;
 - (l) Any potential counter-productive outcomes of taking Court proceedings;
 - (m) The likely outcome in the event of conviction, with regard to enforcement and sentencing options available to the Court.
 - (n) Except in cases of urgency, or in circumstances where Court proceedings are considered the best way to obtain compliance, court proceedings will be commenced only after other forms of compliance action have been taken, and a violation is continuing.
18. In recommending that enforcement proceedings be commenced before a tribunal or court in relation to a particular matter, legal counsel must form the opinion that there are reasonable prospects of success should the matter proceed to a defended hearing. Proceedings should not be commenced where there are no reasonable prospects of success. Prior to recommending the commencement of proceedings, legal counsel must be satisfied that the admissible evidence establishes a case to their required standard of proof.
19. After due consideration of the aforementioned factors, legal counsel will make a recommendation to the Administrator, and the Administrator shall place the matter before Council at its next meeting, for consideration.

20. Council will on the basis of the recommendations made by legal counsel, direct counsel to take such proceedings as Council shall consider appropriate.

H. PROSECUTION AND ENFORCEMENT PROCEEDINGS

21. Where the Council directs legal counsel to proceed, legal counsel shall proceed as directed. Where legal counsel is of the view that an amendment to its recommendations and intended course of action is necessary, legal counsel shall notify the Administrator, who shall put the matter before Council at its next meeting. Council shall make a determination and inform legal counsel, who shall proceed in accordance with the amended process.
22. Where prosecution is indicated, legal counsel shall be responsible, in conjunction with the Police, for laying any necessary information before the Court, obtaining any summons, obtaining the attendance of witnesses, and taking any other steps as may be necessary, in the discretion of the Prosecutor, for the purposes of prosecuting the offence.
23. Where at any point during prosecution or enforcement proceedings the Prosecutor should consider it inappropriate to proceed further, the Prosecutor may withdraw or stay any charges and seek further direction from Council.
24. Where Court proceedings are complete, and a finding has been made adverse to the Town, the Prosecutor shall report the outcome and make a recommendation with respect to whether the matter ought to be appealed to the Administrator. After consultation with the Prosecutor, Council will be responsible for making a determination as to whether to proceed with an appeal.
25. Where conviction or a Court Order has been obtained, or other civil enforcement has been successful, the Prosecutor shall report to the Administrator with the outcome. Where any such determination is appealed, the Prosecutor will report to the Administrator with their recommendation as to whether to oppose the appeal, and Council will provide such direction to the Prosecutor.
26. Where a conviction is secured, legal counsel, shall, unless directed otherwise by Council, proceed to enforce any sanction imposed by the Court, including taking proceedings to collect any fine, or enforce any compliance order. Where confinement to jail is directed by the Court, legal counsel will work with the Police to give effect to any such penalty.